

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 4 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FACUNDO LOPEZ-PEREZ, AKA Israel
Lopez Zasqueta, AKA Jose Huerta
Maldonado,

Defendant - Appellant.

No. 23-336

D.C. No.

1:14-cr-00045-AWI-BAM-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted March 26, 2024**

Before: TASHIMA, SILVERMAN, and KOH, Circuit Judges.

Facundo Lopez-Perez appeals from the district court's order denying his third motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). We have jurisdiction under 28 U.S.C. § 1291. Reviewing for abuse of discretion, *see*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

United States v. Aruda, 993 F.3d 797, 799 (9th Cir. 2021), we affirm.

Lopez-Perez first contends that the district court's conclusion that he failed to exhaust his administrative remedies is not supported by the record, which shows that he exhausted his first two compassionate release motions. As the district court observed, however, Lopez-Perez did not provide any evidentiary support for his assertion that he exhausted his administrative remedies as to *this* motion. *See* 18 U.S.C. § 3582(c)(1)(a); *United States v. Keller*, 2 F.4th 1278, 1283 (9th Cir. 2021) (a defendant must separately exhaust as to each compassionate release motion he files).

But, even assuming the district court erred in its exhaustion analysis, it did not abuse its discretion in denying relief on the alternate ground that Lopez-Perez had not shown extraordinary and compelling circumstances warranting compassionate release. *See Keller*, 2 F.4th at 1283 (district court's error in passing over the exhaustion issue was harmless because the court properly denied the motion on other grounds). The district court acknowledged that Lopez-Perez had health conditions that put him at higher risk from COVID-19, but reasonably concluded that this risk was mitigated by a number of factors, including his vaccination against COVID-19. Although the district court did not discuss each of Lopez-Perez's assertions, the record reflects that the court understood its broad discretion and sufficiently considered Lopez-Perez's arguments and circumstances.

See United States v. Wright, 46 F.4th 938, 949 (9th Cir. 2022) (district court is not required to “expound upon every issue raised by a defendant”).

AFFIRMED.